COVINGTON & BURLING

VIA FAX

February 17, 1995

MEMORANDUM TO THE COMMITTEE OF COUNSEL

Re: Washington State OSHA Litigation

Yesterday, oral argument was held by telephone before Commissioner Crooks of the Washington State Supreme Court on Appellants' Motion for Interlocutory Review. I presented argument on behalf of appellants, and Elliot Furst argued for DOL. Commissioner Crooks asked a number of questions, and appeared to have read the briefs and thought about the issues. At the conclusion of the argument, Commissioner Crooks stated that he was "skeptical" that the Washington Supreme Court should intervene at this stage of the case, but that he wanted to give further thought to some of our arguments, particularly the question whether the trial court erred in permitting the introduction of post hoc testimony to explain DOL's claimed reasoning in imposing the smoking ban.

Commissioner Crooks stated that he would attempt to issue a ruling on our motion by next Wednesday, February 22nd. After we have received the Commissioner's ruling, we will consult with you on next steps.

Clausen Ely, Jr.

cc: Messrs. Butler
Phillips
Rupp
Owen
Hart
Krotoszynski

2041247496

Source: https://www.industrydocuments.ucsf.edu/docs/lfch0005